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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Family Entertainment Services, Inc., d/b/a/ IMC

File: B-291997.4

Date: June 10, 2004

Timothy E. Heffernan, Esq., Watt, Tieder, Hoffar & Fitzgerald, for the protester.
Maj. Robert B. Neill, Department of the Army, for the agency.
Sharon L. Larkin, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of awardee's past performance and key personnel is reasonable, where evaluation is consistent with the solicitation's evaluation criteria and is supported by the record.

DECISION

Family Entertainment Services, Inc., d/b/a IMC (IMC) protests the award of a contract to Terry Land Development (TLD) under request for proposals (RFP) No. DABK09-03-R-0004, issued by the Department of the Army for grounds maintenance services for the Fort Campbell, Kentucky military reservation. IMC challenges the agency's evaluation of TLD's past performance and key personnel.

We deny the protest.

The RFP, set aside for Historically Underutilized Business Zone (HUBZone) small business concerns, contemplated the use of commercial item procedures to award a fixed-price contract for grounds maintenance services. RFP at 25, 26, 33. These services included such items as mowing, edging, trimming, removing debris, and repairing damaged areas for 6,999 acres of improved grounds, of which 4,760 acres is grass. RFP at 39. The RFP provided for a 1-year base period with four 1-year options, and five additional 1-year options based on award terms. Within each 1-year period, the RFP contemplated a mowing season of 8 months. RFP at 28, 39.

The RFP provided for a best-value award based on quality and price, with quality being "slightly more important than" price. The RFP stated, however, that "[t]he

importance of the price in the selection will increase as the quality differences between proposals decreases.” RFP at 88.

The RFP stated that the quality factor consisted of two subfactors—past performance and technical/management—with past performance being “slightly more important than” technical/management. The past performance subfactor consisted of four equally weighted sub-subfactors: quality of products/services, scheduling, business relations, and safety/experience modification. The technical/management subfactor consisted of four equally weighted sub-subfactors: technical excellence/experience, management capabilities, key personnel qualifications, and subcontractor data. RFP at 88-89.

For the past performance subfactor, the RFP required that each offeror “identify and submit a separate record for all Federal, state and local government and private contracts that are similar in dollar value and complexity to the work required in this solicitation within the past three (3) years.” RFP amend. 1, at 84. For the technical/management subfactor, among other things, contractors were to identify and provide the resumes for key personnel, which the RFP defined as “those Contractor personnel considered to be essential to the performance of the contract (Program Manager and Quality Control Officer),” and letters of intent for proposed subcontractors. The RFP cautioned that the “failure to provide a valid written letter of intent between the prime contractor and the subcontractors and/or provide resumes for key personnel in the proposal may invalidate the experience/credentials and may not be used as part of the evaluation of the proposal.” RFP amend. 1, at 86-87.

The Army received 15 proposals in response to the RFP and, after initial evaluation, found 7 (including IMC’s and TLD’s proposals) to be in the competitive range. The agency rated IMC’s and TLD’s initial proposals as follows:

	Past Performance	Technical/Management	OverallQuality	Price
IMC	Excellent	Satisfactory	Good	\$12,852,555.52
TLD	Very Good	Satisfactory	Good	\$12,494,488.00

AR, Tab 12, Pre-Negotiation Objective Memorandum (POM), at 17.

The Army held discussions with each of the offerors in the competitive range concerning deficiencies and weaknesses in their proposals, and invited offerors to submit revised proposals. After evaluating revised proposals, the Army reduced the competitive range to three offerors, including IMC and TLD. The Army held another round of discussions with the offerors in the competitive range and again sought revised proposals. After reviewing these revised proposals, the Army determined that further discussions were not warranted, and sought final proposal revisions (FPR) from the offerors. The Army’s evaluation ratings for IMC’s and TLD’s FPRs are reflected below:

	Past Performance	Technical/Management	Overall Quality	Price
IMC	Excellent	Satisfactory	Good	\$12,995,906.06
TLD	Very Good	Good	Good	\$11,972,372.00

AR, Tab 29, Post/Price Negotiation Memorandum (PNM), at 12-13.

Under the past performance subfactor, the Army rated IMC’s proposal excellent, based on IMC’s performance under a 2-year grounds maintenance contract that IMC is currently performing at Fort Campbell, Kentucky, valued at “\$2 million or greater.” Contracting Officer’s Statement at 5. The Army noted that this was the only contract that IMC identified for past performance, but also noted that the customer rated IMC’s performance as excellent. AR, Tab 29, PNM, at 12, 13-14; see also Tab 12, POM, at 15.

The Army gave TLD’s proposal a lower past performance rating of very good. The Army noted that TLD identified only one 15-year mowing contract valued at \$292,856 covering 1500 acres of land, but recognized that TLD identified 10 other contracts for landscape, utilities installation, and site construction ranging in value from \$146,092 to \$3.2 million. The Army found these other contracts to be “more complex [in] nature than grounds maintenance” and concluded that they were an indicator of successful performance here, since grounds maintenance work “is not considered to be highly technical.” Contracting Officer’s Statement at 6. Based on customer surveys received for four of the identified contracts that the Army found to be of “similar dollar value and complexity” to the RFP’s required effort, where the customers rated TLD’s performance from very good to excellent, the Army rated TLD’s proposal very good under the past performance subfactor. AR, Tab 29, PNM, at 10, 13; see also Tab 12, POM at 12.

Under the technical/management subfactor, the Army rated IMC’s proposal satisfactory because, although it found that IMC’s proposal “possesses adequate quality,” it noted several disadvantages. For example, it found that IMC’s proposal had demonstrated management skills in performing only “one contract for the past several years” (the grounds maintenance contract discussed above), and failed to “show that key personnel were abreast on rules, regulations, and guidelines as it relates to grounds maintenance.” The Army also found that IMC’s management structure was “quite confusing,” noting in particular that the proposal’s “write-up did not coincide with the organization chart” and that there were several ambiguities between the two documents that “made it difficult to follow [IMC’s] management structure as well as the responsibilities of the key personnel.” AR, Tab 29, PNM, at 13.

TLD's proposal received a higher technical/management rating (good) based on the fact that its proposal received higher ratings than IMC's for two of four technical/management subfactors.¹ In support of the higher ratings, the Army noted that TLD's proposal "clearly has an advantage over the other offerors" under the "[m]anagement category" based on TLD's "extensive experience managing multi-million dollar contracts that are . . . more complex than a ground[s] maintenance contract." The Army also found that TLD's personnel were "highly qualified" given their extensive experience managing contracts that "far exceeds the experience necessary to manage a grounds maintenance contract," although the agency recognized that TLD's "experience in grounds maintenance is limited." The Army also found advantageous TLD's ability to acquire needed resources to fulfill the requirement. *Id.* at 12.

In performing its best-value analysis, the Army determined that there was "very little difference in the overall quality" of TLD's and IMC's proposals. In this regard, it noted that TLD demonstrated a "stronger ability to manage a contract of this nature and . . . showed extensive experience on contracts of a more complex nature than grounds maintenance," whereas IMC's management was limited to only one grounds maintenance contract. *Id.* at 15. It also noted that IMC provided past performance documentation for only one contract, whereas TLD provided past performance documentation for several contracts and received high past performance ratings under the four customer surveys received. Although the Army recognized that IMC's one prior contract was a grounds maintenance contract and that TLD's experience in that area was "limited," the agency found that TLD's lesser experience was offset by its higher technical/management ratings and very good past performance. Thus, both offerors' proposals, according to the agency, were deserving of an overall "good" quality rating. Given that the Army found both proposals deserving of essentially equal ratings under the quality factor, it elected to award to the lower-priced offeror, finding that IMC's higher past performance rating was not worth the additional price. *Id.* at 13-15. Award was made to TLD and this protest followed.

IMC first protests the Army's evaluation of TLD's past performance. It contends that that the agency abandoned its evaluation criteria by considering TLD's contracts that were not for grounds maintenance work. It asserts that TLD's proposal should have received either a lower, or "unknown," past performance rating, since the offeror lacked experience performing grounds maintenance work of "similar scope" to the

¹ TLD's proposal received good ratings for technical excellence/experience and management capabilities, and satisfactory ratings for key personnel qualifications and subcontractor data, whereas IMC received satisfactory ratings for all four sub-subfactors. AR, Tab 29, PNM, at 12.

required effort. The Army responds that the RFP required evaluation of contracts of “similar dollar size and complexity,” not “similar scope,” and that it evaluated TLD’s past performance reasonably and in accordance with these criteria.

The evaluation of past performance, including the agency’s determination of the relevance and scope of the offeror’s performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable, inconsistent with the solicitation criteria, or undocumented. Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5.

We do not agree with IMC that the Army abandoned its evaluation criteria by considering contracts other than grounds maintenance contracts to be relevant. The RFP stated that experience would be evaluated for “similar dollar value and complexity,” which reasonably includes performance of other types of work, as was evaluated here.² The record shows that, consistent with the RFP, the Army considered the dollar value and complexity of TLD’s contracts and found several to be of similar dollar value and even more complex than was required under the RFP. Successful performance under these contracts demonstrated to the Army that TLD was “capable of mobilizing, organizing, and managing a grounds maintenance contract” of this size. As the agency explained, “mowing grass . . . is not a difficult task; however, the ability to manage a team of individuals in a organized fashion that results in standards being met in a timely manner for over 4700 acres of grass requires good management, organizational, and quality control skills.” Contracting Officer’s Statement at 6. Given that TLD’s customers rated its performance from very good to excellent on these more complex projects, we find that the Army’s assessment of a very good rating to TLD’s performance under the past performance subfactor was reasonable.³

² Citing the RFP’s “instructions to offerors” which requested that offerors identify past performance for the “same or similar items,” IMC argues that favorably considering other than grounds maintenance work is unreasonable. However, instructions to offerors are not the same as evaluation criteria; rather than establishing minimum evaluation standards, the instructions only provide guidance to assist offerors in preparing and organizing proposals. All Phase Env'tl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ __ at 4. The information required by the instructions need not correspond to the evaluation criteria. Id.; JW Assocs., Inc., B-275209.3, July 22, 1997, 97-2 CPD ¶ 27 at 3-4. In any event, the record shows that the Army recognized that TLD had more limited grounds maintenance experience and took this into account when selecting TLD for award.

³ Additionally, we find no merit to IMC’s arguments that the record (including TLD’s proposal information) is inadequate or that the agency evaluated offerors unequally under the past performance subfactor.

IMC next complains that TLD “misrepresented” the status of one of its proposed key personnel, and that TLD’s proposal should have been downgraded under the technical/management subfactor for failing to submit a resume for that individual. In this regard, the record shows that both IMC’s and TLD’s proposals offered the same individual to perform as key personnel.⁴ In short, IMC asserts that, because the individual at issue was committed to IMC as its project manger, he could not also be committed to TLD. We disagree.

As with past performance, we review challenges to an agency’s technical evaluation only to determine whether the agency acted reasonably and in accord with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. PharmChem, Inc., B-291725.3 et al., July 22, 2003, 2003 CPD ¶ 148 at 3.

Here, the record shows that TLD unambiguously disclosed to the agency that TLD could not provide the proposed job superintendent’s resume because of that individual’s commitment to its current employer, IMC. AR, Tab 7, TLD’s Initial Proposal, at 156. Nonetheless, TLD’s proposal included a letter of intent, signed by the individual in question, stating that “based on the successful bid [of TLD under this solicitation],” this individual “will assume [the] position as job superintendent.” Id. at 162. The record further shows that the Army recognized that TLD’s proposed job superintendent was currently managing the grounds maintenance work for IMC and that he had also been proposed as IMC’s project manager. AR, Tab 9, TLD’s Overall Technical/Management Rating, at 1-2; Tab 8, IMC’s Overall Technical/Management Rating, at 1. On this record, there is no merit to IMC’s assertion that TLD’s proposal misrepresented the individual’s status.

We similarly reject IMC’s assertion that the agency should have downgraded TLD’s proposal for failing to submit a resume for the individual at issue. The record here indicates that the individual intended to work for the winning contractor, regardless of whether it was IMC or TLD. In this regard, the RFP did not require exclusive commitments from key personnel and, further, provided that failure to submit the key personnel’s resumes “may”--but was not required to--invalidate an offeror’s experience and credentials. RFP amend. 1, at 86-87. It is also clear that the agency

⁴ The individual at issue has been the incumbent foreman for this contract for the past six years. IMC’s proposal referred to him as the “project manager,” and included his resume; TLD’s proposal referred to him as the “job superintendent,” and included a letter of commitment, but advised the agency that, “because of previous obligations to his present employer, he is unable to provide us with his resume.” AR, Tab 7, TLD Initial Proposal, at 156. The record is clear that performance of this individual was considered “essential” by both offerors. Contracting Officer’s Statement at 8. Accordingly, we reject any assertion that TLD’s use of a differing job title was a proper consideration in determining whether submission of a resume was required.

had in its possession the resume of the individual at issue. We note that IMC does not and, in light of its own proposal of this individual, cannot assert that the individual is unqualified to function as key personnel. In evaluating proposals that offer the same key personnel, it is obvious that the experience and qualifications of such personnel must be evaluated the same for each offeror. See The Arora Group, B-293102, Feb. 2, 2004, 2004 CPD ¶ ____ at 3-4. Accordingly, on the record here, we find no error in the agency's consideration of the experience and qualifications of the individual at issue under both TLD's and IMC's proposals.

The protest is denied.⁵

Anthony H. Gamboa
General Counsel

⁵ IMC's remaining protest challenges to the Army's evaluation of its and TLD's proposals under the technical/management subfactor, and best-value award determination were abandoned when IMC failed to address the arguments asserted by the Army in the agency report. TN-KY Contractors, B-291997.2, May 5, 2003, 2003 CPD ¶ 91 at 3 n.2.